THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.35679 OF 1997

DATED: 14-06-2007

Between:

M. Safdar Baig (since died) and another.

.. Petitioners

and

The Chief Security Officer, now called as Chief Security Commissioner, Railway Protection Force, S.C. Railway, Rail Nilayam, Secunderabad and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.35679 OF 1997

ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to the proceedings No.X/P.227/1/44/81, dated 21.9.1981, which was confirmed by the 2nd respondent, by his proceedings dated 30.6.1997, and quash the same as arbitrary and illegal; and consequently to direct the respondents to pay all the pensionary benefits including arrears of salary to the petitioner.

At the outset, it is to be noticed that the sole petitioner died during the pendency of this writ petition on 23.12.1999 and his son, being his legal heir, was brought on record as 2nd petitioner.

It appears, the 1st petitioner (since died), who was working as Sub Inspector (Fire) in the Railway Protection Force, South Central Railway at Hubli, was removed from service on 21.9.1981, after conducting an ex-parte enquiry into the allegation that he absented from duties unauthorizedly. Aggrieved by the same, he filed an appeal (as per orders, dated 14.12.1995, passed by this Court in W.P.No.6017 of 1994) before the 2nd respondent-Director General, Railway Protection Force and the same was dismissed by an order, dated 30.6.1997. Aggrieved by the same, the present writ petition is filed.

It appears, the only charge against the 1st petitioner (since died) was that he remained absent from duty unauthorizedly from 17.10.1978 till the date of issuance of charge sheet. It also appears

that the removal order, dated 21.9.1981, was passed by conducting an exparte enquiry.

The case of the respondents is that when communication was sent to the known address of the 1st petitioner under registered cover, intimating him to appear for the enquiry, the same was returned undelivered with an endorsement of the postal authorities that the 1st petitioner left the place and, therefore, an ex-parte enquiry was conducted, in which the charge against the 1st petitioner was proved. Further, a show cause notice was also issued, which was sent by registered cover, and the same was also returned undelivered. Therefore, final order, dated 21.9.1981, was passed removing the 1st petitioner from service.

Now, the questions that arise for consideration are whether the 1st petitioner could have been removed from service by conducting an exparte enquiry and, even if it is assumed that the charge is proved, whether the punishment of removal from service is in proportion to the misconduct alleged against him?

The allegation against the 1st petitioner was that he was unauthorisedly absent from 17.10.1978 till the date of issuance of charge sheet. Admittedly, neither the charge sheet nor the enquiry report was served on the petitioner. In fact, in the impugned order, dated 21.9.1981, and the order, dated 30.6.1997, of the 2nd respondent-appellate authority, it has been asserted that notice, which was sent to the known address of the 1st petitioner, was returned unserved stating that the addressee left. Again the show cause notice was also sent to the same address, which is ridiculous. Once the earlier communication was returned with the said endorsement, the

respondents could not have sent another communication to the same address. They could have gone for substituted service. No such effort was made. Therefore, it cannot be said that the enquiry was properly conducted and the petitioner was given proper opportunity to defend himself. Be that as it may, even assuming that the charge is proved, I am of the opinion that imposing punishment of removal from service on an employee, who had put in thirty long years of clean service, is shockingly disproportionate to that of the misconduct alleged against him. In fact, in the appeal filed before the 2nd respondent, the 1st petitioner had categorically requested him to treat the punishment of removal from service to that of compulsory retirement, so that he can get some pensionary benefits as per law.

Generally speaking, under these circumstances, the matter requires to be remanded to the disciplinary authority for reconsideration of the matter. But, since the 1st petitioner died, it is not possible to do the same and it is appropriate to give a quietus to this litigation at this stage itself.

For all the above reasons, the impugned order, dated 21.9.1981, which was confirmed by the 2nd respondent, by his order dated 30.06.1997, is modified as hereunder:

The respondents shall treat that the 1st petitioner (since died) has been retired from the service of the Railway Protection Force compulsorily with effect from 21.9.1981. They shall extend all the benefits accrued to the 1st petitioner in view of his compulsory retirement and pay them to the 2nd petitioner or other nominees of the deceased 1st petitioner, as per law, within a period of three months from the date of receipt of a copy of this order.

With the above modification, the writ petition is disposed of. There shall be no order as to costs.

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C.V. RAMULU, J

14th June, 2007.
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